

**United States**  
**COURT OF APPEALS**  
**for the Ninth Circuit**

---

H. S. LEASE and H. S. LEIGHLAND, copartners  
doing business under the firm style and name of  
Lease and Leighland, SEABOARD SURETY  
COMPANY, a corporation, YORKSHIRE IN-  
DEMNITY COMPANY, a corporation and  
EMPLOYERS REINSURANCE CORPORA-  
TION, a corporation,

*Appellants,*

vs.

CORVALLIS SAND AND GRAVEL COMPANY,  
and JOHN H. GALLAGHER, INC.,

*Appellees.*

---

**APPELLANTS' AMENDMENT TO BRIEF**

---

Appeal from the United States District Court for the  
District of Oregon.

---

WILBUR, BECKETT, OPPENHEIMER, MAUTZ & SOUTHER,  
E. K. OPPENHEIMER,  
ARNO H. DENECKE,

1001 Board of Trade Building,  
Portland 4, Oregon,

*Attorneys for Appellants.*

**FILED**

**SEP 12 1950**

**PAUL P. O'BRIEN, CL**



**United States**  
**COURT OF APPEALS**  
**for the Ninth Circuit**

---

H. S. LEASE and H. S. LEIGHLAND, copartners  
doing business under the firm style and name of  
Lease and Leighland, SEABOARD SURETY  
COMPANY, a corporation, YORKSHIRE IN-  
DEMNITY COMPANY, a corporation and  
EMPLOYERS REINSURANCE CORPORA-  
TION, a corporation,

*Appellants,*

vs.

CORVALLIS SAND AND GRAVEL COMPANY,  
and JOHN H. GALLAGHER, INC.,

*Appellees.*

---

**APPELLANTS' AMENDMENT TO BRIEF**

---

Appeal from the United States District Court for the  
District of Oregon.

---

Appellants desire to amend their brief at page 34 by  
inserting the following matter after the quotation from  
transcript, page 79, testimony of Professor Thomas, to-  
wit:

"That Professor Thomas' recollection that he never recommended less than  $4 \frac{2}{3}$  sacks of cement is unequivocally supported by the various letters which he wrote, to-wit:

Professor Thomas wrote to Corvallis Sand & Gravel Co. on July 21, 1947 in part as follows (Deft.'s Ex. 25):

"On account of the slightly finger grading of the coarse aggregate and because of the narrow margin we have had in regard to strength of the tested cylinders, it might seem best as long as your coarse aggregate continues of this somewhat finer maximum size, to use the mix as recommended below for a  $1\frac{1}{2}$  cubic yard basis.

Cement	$7\frac{1}{2}$ sks.
Sand	0.85 cu. yd.
#2 Gravel	0.495 cu. yd.
#1 Gravel	0.618 cu. yd.
Darex	4 fl. oz.

Water to give 2"-3" slump"

Professor Thomas wrote to Corvallis Sand & Gravel Co. on August 7, 1947 in part as follows (Deft.'s Ex. 26):

*"Recommended Batch Weights for  $1\frac{1}{2}$  cu. yd. Concrete*

W/C Ratio—5.92 gal/sk

Slump—4 in.

Material weights:

Cement, $7\frac{1}{2}$ sks. or 705 lb.	
Water	241 lb. (allowing for free moisture in agg—5% sand, 1% in gravel)
Darex	4 fl. oz.
Sand	2124 lb.
#2 Gravel	687 lb.
#1 Gravel	2180 lb.
Total	<hr/> 5944 lb. or 3955 lb./cu. yd."

Professor Thomas wrote to Corvallis Sand & Gravel Co. on August 12, 1947 in part as follows (Deft.'s Ex. 27):

"The proportions are as follows:

Cement	7 sks. or 658 lb.
Water (to add)	32.6 gal. or 272 lb.
Sand (5% moisture)	1560 lb.
#3 Gravel (1% moisture)	480 lb.
#2 Gravel (1% moisture)	1440 lb.
#1 Gravel (1% moisture)	1440 lb.
Slump 2 in.	) Lab specimen
Air Voids 3.2%	) hand mixed
Estimated strength at 28 days—2860 psi	
at 7 days—1505 psi"	

Professor Thomas wrote to Corvallis Sand & Gravel Co. on September 3, 1947 in part as follows (Deft.'s Ex. 29):

"To produce  $1\frac{1}{2}$  cu. yd. of mixed concrete in place, assumed as containing 2% dispersed air-voids, the necessary quantities are as follows:

Cement	7 sks. or 658 lb.
Water (to add)	32.5 gal. or 271 lb. (to give approx. 4 in. slump)
Sand (5% moisture)	1712 lb.
#2 gravel (1% moisture)	1438 lb.
#1 gravel (1% moisture)	1838 lb.
Darex	4 fl. oz.
Total Weight	<hr/> 5917 lb."

Professor Thomas wrote to Corvallis Sand & Gravel Co. on September 5, 1947 in part as follows (Deft.'s Ex. 30):



“Recommended Proportions for  $1\frac{1}{2}$  cu. yd. Batch  
(accurately 1.492 cu. yd.)

Darex	(4 fl. oz.)
Cement	7 sks. or 658 lb.
Water (to add)	31.6 gal. or 263 lb. (on basis of 3 in. slump)
Sand (5% moisture)	2130 lb.
#2 Gravel ( $\frac{1}{2}\%$ moisture)	1196 lb.
#1 Gravel ( $\frac{1}{2}\%$ moisture)	1535 lb.
Total	<hr/> 5782 lb.”

Professor Thomas wrote to Corvallis Sand & Gravel  
Co. on October 8, 1947 in part as follows (Deft.’s Ex. 34):

“Proportions Adjusted to 8-Sack Batch (W/C  
6.4 gal./sk.)

Cement, 8 sks. or	752 lb.
Darex, 4 fl. oz.	
Water (to add)	284 lb. or 34.1 gal.
Sand (5% moisture)	2248 lb.
#2 gravel	1289 lb.
#1 gravel	1655 lb.
Wt. of batch	<hr/> 6228 lb. or 1.60 cu. yd.
Wt. cu. yd.	3894 lb.”

Respectfully submitted,

WILBUR, BECKETT, OPPENHEIMER, MAUTZ & SOUTHER,  
E. K. OPPENHEIMER,  
ARNO H. DENECKE,  
Attorneys for Appellants.